

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

FEB 22 2011

SECRETARY, BOARD OF
OIL, GAS & MINING

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IN THE MATTER OF THE	:	
APPLICATION OF WESTWATER	:	
FARMS, LLC FOR ADMINISTRATIVE	:	ORDER DENYING MOTION FOR
APPROVAL OF THE HARLEY DOME 1	:	REHEARING
SWD WELL LOCATED IN SECTION 10,	:	
TOWNSHIP 19 SOUTH, RANGE 25	:	Docket No. 2010-029
EAST, SLM, GRAND COUNTY, UTAH,	:	Cause No. UIC-358.1
AS A CLASS II INJECTION WELL.	:	

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An evidentiary hearing was held on December 8, 2010, and on January 13, 2011, the Board issued its Findings of Fact, Conclusions of Law and Order in the above-captioned matter. On February 1, 2011, Respondent Living Rivers filed a Request for Rehearing and Modification of Existing Order, And in the Alternative, Request for a Stay of the Order Issued on January 13, 2011 (“Motion for Rehearing”). On February 17, 2011, Petitioner Westwater Farms, LLC filed a Memorandum in Opposition to Living Rivers’ Request for Rehearing and Modification of Existing Order, And in the Alternative, Request for a Stay of the Order Issued on January 13, 2011 (“Opposition Memorandum”). On February 22, 2011, the Division of Oil, Gas and Mining filed a Memorandum in Opposition to Living Rivers’ Request for Rehearing and Modification of Existing Order, And in the Alternative, Request for a Stay of the Order Issued on January 13, 2011 (“Division’s Memorandum”).

NOW THEREFORE, the Board, having considered the above-listed briefs, and good cause appearing, hereby denies the Motion for Rehearing.

Utah Admin. Code R641-110-200 states:

A petition for rehearing will set forth specifically the particulars in which it is

claimed the Board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

In its Motion for Rehearing, Living Rivers states that it has now sought and obtained an expert witness who has opined in preliminary discussions with Living Rivers that additional questions should be examined by this Board. Motion for Rehearing at 2, ¶3. Because Living Rivers' Motion for Rehearing is based upon newly discovered evidence, the Board's rehearing rule requires that Living Rivers file an accompanying affidavit setting forth the nature and extent of the new evidence, its relevancy to the issues involved, and a statement that Living Rivers could not, with reasonable diligence, have discovered the evidence prior to the hearing. Living Rivers has not submitted the required affidavit or otherwise addressed why the expert testimony it now wishes to present could not have been presented at the December 8, 2010 hearing in this matter. For this and other reasons noted in the Opposition Memorandum and Division's Memorandum, the Board finds that Living Rivers has not complied with the Board's rehearing rule or shown good cause for the Board to grant the Motion for Rehearing.

Living Rivers has requested that in the event the Board denies its request for a new hearing, that the Board stay its decision for a period of at least thirty days to permit Living Rivers to appeal the Board's decision to the Utah Supreme Court. The Motion for Rehearing does not address why a stay of the Board's order is necessary (other than to permit Living Rivers thirty days to prepare its appeal). As noted in the Board's January 13, 2011 Order in paragraph 6 on page 12, the Board's denial of Living Rivers Motion for Rehearing starts a new thirty-day

period within which Living Rivers may appeal the Board's decision to the Supreme Court. For these reasons, the Board denies Living Rivers' request for a stay of its decision.

For the reasons discussed above, the Motion for Rehearing is denied.

The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

Issued this 22 day of February, 2011

UTAH BOARD OF OIL, GAS & MINING



Douglas E. Johnson, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing ORDER DENYING MOTION FOR REHEARING to be mailed with postage prepaid, this 22 day of February, 2011, to the following:

Thomas W. Clawson
Van Cott, Bagley, Cornwall & McCarthy
36 South State Street, Suite 1900
Salt Lake City, UT 84111

Westwater Farms, LLC
% Tom Warnes
PO Box 23358
Silverthorne, CO 80498

Michael S. Johnson
Assistant Attorneys General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116

Steven F. Alder
Fred Donaldson
Assistant Attorneys General
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116

Grand County
Road Department
125 East Center
Moab, UT 84532

United States Bureau of Land Management
Moab Field Office
82 East Dogwood
Moab, UT 84532

Federal Highway Administration
2520 West 4700 South, Suite 9-A
Salt Lake City, UT 84118-1847

Mid-America Pipeline Company
PO Box 4324
Houston, TX 77210

Utah School and Institutional Trust Lands
Administration
675 East 500 South, Suite 500
Salt Lake City, UT 84102-2818

Petro Resrc Corp.
777 Post Oak Blvd, Suite 910
Houston, TX 77056

RMOC Holdings, LLC
921 East Belleview Avenue
Littleton, CO 80121
[Undeliverable]

Shiprock Helium, LLC
P.O. Box 51166
Amarillo, TX 79159

Retamco Operating, Inc.
Attn: Joe Glennon
P.O. Box 790
Red Lodge, MT 59068-0790

Living Rivers
John Weisheit
PO Box 466
Moab, UT 84532

Bill Love
2871 East Bench Road
Moab, UT 84532

United States Fish and Wildlife Service
Attn: Larry Crist
Utah Field Office
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

Jacque M. Ramos
J. Ramos Law Firm
2709 South Chadwick St.
Salt Lake City, Utah 84106

Patrick A. Shea
Attorney for Living Rivers
215 South State St. Suite 200
Salt Lake City, Utah 84111

